

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR06-157MJP
)	
Plaintiff,)	GOVERNMENT'S RESPONSE TO
)	DEFENDANT'S MOTION TO
v.)	DISMISS FOR SPEEDY TRIAL
)	VIOLATION
HENRY ROSENAU,)	
)	
Defendant.)	Noted: April 20, 20102

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Susan M. Roe and Marc A. Perez, Assistant United States Attorneys for said District, and files this Response to the Defendant's Motion to Dismiss for Speedy Trial Violation. The Court should deny the motion to dismiss as the Speedy Trial clock has tolled from the original and timely trial date of June 27, 2011 until the upcoming trial date of April 23, 2012.

The defendant had his initial appearance on May 28, 2011. Dkt # 11. At that hearing the trial was set for June 27, 2011, a date well within the 70 day rule of Title 18, United States Code, Section 3161.

Pursuant to a Joint Motion to Continue filed on May 20, 2011, this Court continued the trial from June 27, 2011 until November 7, 2011. The Order was signed on May 24,

1 2011. Dkt # 17. The four days between May 20 and May 24 are excludable. Title 18, United
2 State Code, Section 3161 (h)(1)(D). The defendant waived his speedy trial from June 27,
3 until December 1, 2011, Dkt #18, and the Court's Order contained tolling of speedy trial
4 from June 27 until and including November 7, 2011. Dkt # 20.

5 On November 14, 2011, the Court found good cause for continuing the matter over the
6 defendant's objections, based on the sudden necessity for a formal MLAT request for
7 essential trial witnesses, including all RCMP law enforcement witnesses and a cooperating
8 former co-conspirator. The government had requested the presence of the Canadian law
9 enforcement through government to government channels well in advance of the November
10 trial date and had been assured of their appearance. Likewise an essential foreign witness
11 was prepared to attend trial the foreign witnesses were rendered unavailable by the
12 defendant's actions. Pursuant to the provisions of Title 18, United States Code, Sections
13 3161 (h)(3)(A) and 3161 (h)(8) and Title 18, United States Code, Section 3292 regarding
14 foreign evidence, the Court tolled the time from November 7, 2011 until March 19, 2012.
15 Dkt # 69.

16 On February 27, 2012, and after consideration of information regarding the status of
17 the MLAT request, the Court ordered the trial continued from its March 19 date until April
18 23, 2012. Citing again the allowable one year tolling of the Speedy Trial Act, for the
19 processing of an MLAT request *post* indictment, the Court excluded the time between March
20 19, 2012 until the new trial date of April 23, 2012. Dkt # 78.

21 The only non-excludable speedy trial time which has run is the initial time between
22 April 28 first appearance and the June 27th trial date, minus the four days tolled while the
23 Motion to Continue was pending. That period is 56 days (60 days minus 4 days in May).
24 All other time has been excluded either by the defendant's written waiver, by a pending
25 motion, or by an official request, as that term is defined in Title 18, United States Code,
26 Section 3292, to permit the United States to obtain foreign evidence.

1 The current trial date of April 23, 2012 is within speedy trial and the motion should be
2 denied.

3 DATED this 19th day of April, 2012.

4 Respectfully submitted,

5 JENNY A. DURKAN
6 United States Attorney

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25 CERTIFICATE OF SERVICE

26 I hereby certify that on April 19, 2012, I electronically filed the foregoing with the
27 Clerk of Court using the CM/ECF system which will send notification of such filing to the
28 attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s)
of record for the defendant(s) that are non CM/ECF participants via telefax.

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